



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.6130 of 2022

T.Ramakrishnan

... Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Tashildar,
Madurai West Taluk,
Madurai.

3.The Block Development Officer,
Thirupparankundram Panchayat Union,
Thirupparankundram,
Madurai.

4.The President/Executive Officer,
Erkudi - Achampathu Panchayat,
Achampathu,
Madurai - 19.

5.A.Ramar @ Ramachandran

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 to 4 herein to remove the encroachments made by the 5th respondent herein in Survey No.61/31 in Achampathu Village, Madurai South Taluk, Madurai District and consequently to direct the respondents 1 to 4 herein to maintain the said street without any obstruction or encroachment for free ingress and egress for the public.

For Petitioner	: Mr.K.Hemakarthiskeyan
For Respondents 1 to 3	: Mr.S.P.Maharajan Special Government Pleader
For Respondent No.4	: Mr.M.Siddharthan Additional Government Pleader
For Respondent No.5	: No appearance

**ORDER**

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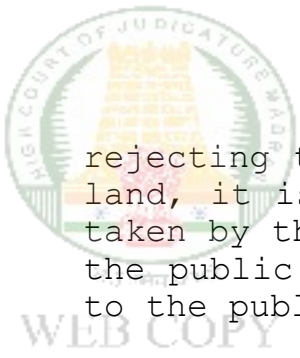
(Order of the Court was made by **S.S.SUNDAR, J.**)

The petitioner, who is a resident of Door No.4/16, Gandhi Nagar, Madurai, has filed the writ petition for issuing a Writ of Mandamus, directing the respondents 1 to 4 herein to remove the encroachments made by the 5th respondent herein in Survey No.61/31 in Achampathu Village, Madurai South Taluk, Madurai District and to give further direction to respondents 1 to 4 herein to maintain the street without any obstruction or encroachment for free ingress and egress of the public.

2. It is the case of the petitioner that Survey No.61/31 of Achampathu Village is classified as a street and that the 5th respondent, who has got his house adjacent to street, has encroached the street to a substantial portion, thereby depriving the right of public to have free access through the street.

3. It is also the case of the petitioner that he has made a representation to the 4th respondent on 19.03.2011, but the 4th respondent had not initiated any action against the 5th respondent. There were few other representations made by the petitioner and ultimately this Court in the earlier writ petition filed by the petitioner in W.P.(MD) No.7930 of 2011 has directed the Revenue Divisional Officer, Madurai District to pass appropriate orders on the representation of the petitioner regarding removal of encroachment. Pursuant to the said order, it appears that the Tahsildar, Madurai South has passed an order on 18.09.2011, directing the 5th respondent to leave the road portion. Though there was a subsequent communication that was addressed to the Block Development Officer, Thirupparankundram in 2012 regarding removal of encroachment within a time frame, there were no further proceedings on account of the fact that the 5th respondent and his wife have filed a suit in O.S.42 of 2014 before the Additional District Munsif Court, Thirumangalam, against the petitioner and other respondents for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the petitioner in Survey No.61/31 of Achampathu Village. The said suit was dismissed after holding that the 5th respondent and his wife are not in lawful possession and that they have not proved their title to the property.

4. It is the stand of the writ petitioner that the judgment of learned Additional District Munsif, Thirumangalam in O.S.No.42 of 2014 was also confirmed by the learned Subordinate Judge, Thirumangalam in A.S.No.107 of 2019. Despite the civil Courts



rejecting the plea of 5th respondent claiming certain right over the land, it is the grievance of the petitioner that no action has been taken by the official respondents to remove the encroachment so that the public street encroached by the 5th respondent will be available to the public for free ingress and egress.

5. Despite service of notice on the 5th respondent, there is no representation for him. The name of the 5th respondent is also printed in the cause list. In such circumstances, keeping the matter pending any more will not serve any purpose. Therefore, this Court is inclined to dispose of the writ petition on the following lines.

6. We have perused the photographs produced by the petitioner. From the averments made in the affidavit filed in support of the writ petition, the orders passed by the civil Courts and the communication of the official respondents, we find that the property which is said to be in the encroachment of the 5th respondent is classified as a street. We have no clue to hold that the entire extent of 0.06.70 hectares classified as street is encroached by the 5th respondent. Further, the 5th respondent has failed to establish his right in S.No.61/31 of Achampathu Village as seen from the judgment of the civil Courts. Therefore, if the property is being enjoyed as a street and the public has a right to have access through the street, the property will be vested with the panchayat. Hence, the concerned Block Development Officer or the Executive Officer has to take appropriate action in accordance with law.

7. Accordingly, we direct the Tahsildar viz., the 2nd respondent to issue notice to the petitioner and the 5th respondent, conduct enquiry and pass appropriate orders with regard to the character of the land in S.No.61/31 of Achampathu Village and the portion in which the 5th respondent has encroached. This exercise shall be done within a period of four weeks from the date of receipt of a copy of this order. Thereafter, depending upon the outcome of the order necessary proceedings shall be initiated against the 5th respondent for removal of encroachment either by the concerned Executive Officer of Panchayat or the Tahsildar within a period of six weeks thereafter. The Tahsildar or the concerned Officer who is empowered to remove encroachment shall communicate the official order that will be passed by them to the petitioner and the 5th respondent. If any encroachment is found in the street priority will be given to remove the encroachment after following the procedures as contemplated under the Rules framed under the Tamil Nadu Panchayats Act, 1994 or any other law.



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8. The Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sj

To

1.The District Collector,
Madurai District,
Madurai.

2.The Tashildar,
Madurai West Taluk,
Madurai.

3.The Block Development Officer,
Thirupparankundram Panchayat Union,
Thirupparankundram,
Madurai.

+1 CC to M/s.SPL.GP (SR-24599[F] dated 08/06/2022)

+1 CC to M/s.K.HEMAKARTHIKEYAN, Advocate (SR-24724[F] dated
09/06/2022)

W.P (MD)No.6130 of 2022
07.06.2022

NSN(CO)

KB(15.06.2022) 4P 6C